

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
HEARTLAND CEMENT COMPANY, INC. and)	
RINECO INC.,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for the assessment of civil penalties pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a), for violations of Sections 3005-06 of RCRA, 42 U.S.C. §§ 6925-26, and the implementing regulations.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

2. The United States District Court for the District of Kansas has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 28 U.S.C. § 1391(b), venue is proper in this Court because the violations occurred in this judicial district.

4. Authority to bring this civil action is vested in the Attorney General of the United States pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been provided to the State of Kansas in accordance with 42 U.S.C. § 6928(a)(2).

DEFENDANTS

6. Heartland Cement Company, Inc. (Heartland) is a corporation organized and incorporated under Delaware law. Heartland is registered and doing business in the State of Kansas. Heartland is a subsidiary of RC Cement Company, also a Delaware corporation.

7. Prior to January 1, 1999, Heartland was a division of Hercules Cement Company, which was a wholly-owned subsidiary of RC Cement Company. In this complaint “Heartland” refers to either Heartland Cement Company or its corporate predecessor(s), as appropriate.

8. As a corporation, Heartland is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

9. Heartland is the owner of a cement manufacturing facility (the Cement Plant), RCRA ID No. KSD980739999, in Independence, Kansas, as the term “owner” is defined at 40 C.F.R. § 260.10.

10. Heartland is an operator of the Cement Plant, as the term “operator” is defined at 40 C.F.R. § 260.10.

11. At a minimum, Heartland was an operator of the hazardous waste storage and testing facilities at the Cement Plant, as the term “operator” is defined at 40 C.F.R. § 260.10, until December 17, 1997, when the Kansas Department of Health and the Environment (KDHE)

notified Heartland that “KDHE is approving [Heartland’s] request for delegating the operational control of the waste fuel facility to Rineco. . . .”

12. Rineco Corporation (Rineco) is a corporation organized and incorporated under Arkansas law. Until December 1998, and during all times relevant to the allegations herein, Rineco was registered and doing business in the State of Kansas.

13. As a corporation, Rineco is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

14. At a minimum, from December 17, 1997, until December 1998, Rineco was also an operator of the hazardous waste storage and testing facilities at the Cement Plant, as the term “operator” is defined at 40 C.F.R. § 260.10.

STATUTORY AND REGULATORY BACKGROUND

15. RCRA was enacted in 1976 to establish a regulatory program for the management of hazardous wastes to be administered by EPA. RCRA established a comprehensive regulatory program for generators and transporters of hazardous waste and for owners and operators of facilities that treat, store or dispose of hazardous wastes.

16. RCRA § 3006(b), 42 U.S.C. § 6926(b), allows the Administrator of EPA to authorize a state to administer and enforce a hazardous waste program.

17. Kansas has an authorized hazardous waste program under RCRA § 3006(b), 42 U.S.C. § 6926(b).

18. Kansas law incorporates the federal definitions of “owner” and “operator” set forth in 40 C.F.R. § 260 subpart B. Kan. Admin. Regs. 28-31-2(a).

19. Kansas law incorporates the general hazardous waste provisions in 40 C.F.R.

§§ 264-65. Kan. Admin. Regs. 28-31-8(a). The hazardous waste regulations in 40 C.F.R. Part 265, Subpart BB are not part of the Kansas authorized program and are directly enforceable by EPA within the state of Kansas.

20. Section 3004 of RCRA, 42 U.S.C. § 6924, requires EPA to promulgate regulations establishing performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste. Section 3004(q) of RCRA, 42 U.S.C. § 6924(q), requires EPA to promulgate regulations specifically governing the burning of hazardous waste as fuel.

21. 40 C.F.R. § 264.13(a)(1) (General Waste Analysis) provides that

[b]efore an owner or operator treats, stores, or disposes of any hazardous wastes . . . he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter.

22. 40 C.F.R. § 264.13(b) provides that the “owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with paragraph (a) of this section.”

23. 40 C.F.R. § 266.102(b) (Hazardous waste analysis) provides, among other things, that

The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of part 261 of this chapter that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. . . .

Alternative methods that meet or exceed the method performance capabilities of SW-846 may be used. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method. . . .(2) Throughout normal operation,

the owner or operator must conduct sampling and analysis as necessary to ensure that the hazardous waste, other fuels, and industrial furnace feedstocks fired into the boiler or industrial furnace are within the limits specified in the permit.

24. 40 C.F.R. § 264.173(a), applies to “owners and operators of hazardous waste facilities that store containers of hazardous waste,” and requires that “container[s] holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.” This requirement was also incorporated by reference into the permit for the facility.

25. 40 C.F.R. § 264.193(e)(1)(iii), states that owners and operators of hazardous waste storage or treatment tanks must have a secondary containment system that is free of cracks or gaps. This requirement was also incorporated by reference into the permit for the facility.

26. 40 C.F.R. § 265.1050(c) (air emission standards for equipment leaks) requires owners and operators of certain types of hazardous waste handling equipment to “mark the equipment in such a manner that it can be distinguished readily from other pieces of equipment.”

27. Section 3005 of RCRA, 42 U.S.C. § 6925(a), provides that “the treatment, storage or disposal of any [listed hazardous waste] is prohibited except in accordance with . . . a permit.”

28. Kansas law provides that it is unlawful to violate “any condition of any permit” issued by the state. Kan. Stat. Ann. § 65-3441(a)(3).

29. The failure to comply with a permit for the storage, treatment, or disposal of hazardous waste is grounds for enforcement action. 40 C.F.R. § 270.30(a) .

30. A civil penalty of \$27,500 may be assessed for each violation of Subtitle C of RCRA and the regulations promulgated thereunder occurring after January 30, 1997.

40 C.F.R. Part 19.

FACTS GIVING RISE TO LIABILITY

31. Heartland has owned and operated the Cement Plant since 1986.
32. In 1989, Heartland began to power its four cement kilns in part by burning liquid fuels containing hazardous wastes. Later, Heartland also began burning solid fuels containing hazardous wastes. Heartland does not currently burn fuels containing hazardous waste.
33. Heartland's burning of hazardous waste-based fuels was subject to the boiler and industrial furnace (BIF) regulations found at 40 C.F.R. Part 266, Subpart H.
34. In 1989, Heartland applied to EPA for a permit to burn hazardous waste-derived fuels.
35. On or about August 21, 1991, Heartland attained interim status for the BIF units by certifying precompliance with 40 C.F.R. § 266.103(b)'s requirements for operating conditions for boilers and industrial furnaces that burn hazardous waste. On or about October 29, 1992, Heartland submitted its Certification of Compliance pursuant to the requirements of 40 C.F.R. § 266.103(c). On or about December 20, 1996, Heartland submitted a second Certification of Compliance pursuant to the requirements of 40 C.F.R. § 266.103(c).
36. Heartland also owns a hazardous waste management facility (the Hazardous Waste Management Facility) located at the Cement Plant.
37. The Hazardous Waste Management Facility was set up to receive waste fuels.
38. The waste fuels would arrive together with manifests and other documentation that stated the proportion of hazardous constituents in the fuel.
39. After arrival, the waste was re-tested at an on-site laboratory at the Hazardous Waste Management Facility, and then was blended into large batches that were fed into the kiln.

40. The KDHE issued Heartland a permit (the Permit) to operate the Hazardous Waste Management Facility on or about September 11, 1989.

41. In 1995, Heartland hired Rineco to purchase, store, test, and blend hazardous waste fuels at the Hazardous Waste Management Facility.

42. The permit originally issued by KDHE listed Heartland as the owner and operator of the Hazardous Waste Management Facility. On December 17, 1997, KDHE sent Heartland a letter stating that "KDHE is approving [Heartland's] request for delegating the operational control of the waste fuel facility to Rineco. . . ."

43. The modified permit designating Rineco as an operator of the Hazardous Waste Management Facility was issued by KDHE on April 3, 1998. The Permit continued to list Heartland as the owner.

44. Apart from the change in the operator of record, all provisions of the Permit quoted or paraphrased in this complaint have been unchanged at all times relevant to this complaint.

45. The Permit provides that "[a]t a minimum, the Permittee shall maintain proper functional instruments, use approved sampling and analytical methods, verify the validity of sampling and analytical procedures, and perform correct calculations." Permit Condition II.C.

46. The Permit provides that the "Permittee shall follow the waste analysis procedures required by 40 C.F.R. § 264.13, as described in the attached Waste Analysis Plan, Permit Attachment 1." Permit Condition II.C.

47. The Waste Analysis Plan also provided that "[t]he laboratory program will include . . . quality control (QC) as defined in the Quality Assurance Plan (QAP) located in the on-site laboratory." Waste Analysis Plan § 2.4.3.2.

48. Since approximately May 1997, Rineco and/or Heartland have had a QAP, also referred to as a Quality Assurance/Quality Control Plan, that spells out both quality control procedures applicable to all laboratory practices and Standard Operating Procedures that describe methods for performing individual kinds of laboratory tests.

49. In September 1997, Heartland and Rineco submitted a revised Waste Analysis Plan and Quality Assurance/Quality Control Plan to KDHE. These plans also contained the Standard Operating Procedures which Heartland and Rineco were proposing to use to perform verification analysis of wastes received at the facility.

50. On May 13-15, 1998, KDHE personnel inspected the laboratory and the storage and treatment areas at Heartland's cement plant (the May 1998 Inspection).

51. On June 16-17, 1998, KDHE personnel returned with EPA inspectors to gather additional information about potential violations and to inspect the combustion equipment and procedures (the June 1998 Inspection).

I. Laboratory Violations

A. General Laboratory Quality Assurance/Quality Control

52. The Quality Assurance/Quality Control Plan provided that the laboratory manager "[i]s responsible to ensure that all laboratory data are reviewed and are of acceptable quality." Quality Assurance/Quality Control Plan at 2. The Quality Assurance/Quality Control plan also provides that "once raw data is generated by the analyst . . . [q]uality control data is reviewed."

53. The Quality Assurance/Quality Control plan provided that "Analytical data that arrives with loads are utilized as an indicator of laboratory performance, the laboratory

manager will use this data as a quality control tool. Monthly comparisons of generator supplied data and internal quality control data are reviewed by the Laboratory Manager.” Quality Assurance/Quality Control Plan at 7.

54. The Quality Assurance/Quality Control Plan required that Rineco “perform[] all the procedures in the lab with precision and accuracy and in compliance with all SOP’s.” Quality Assurance/Quality Control Plan at 2.

55. The Quality Assurance/Quality Control plan provided that “the Quality Assurance Officer must stop an analysis if not satisfied with the calibration or other [Quality Control] data.” Quality Assurance/Quality Control Plan at 2.

56. The Quality Assurance/Quality Control Plan provided that there were four areas of responsibility at the laboratory: Laboratory Manager, Senior Analyst, Lab Technician, and Quality Assurance/Quality Control Officer. Quality Assurance/Quality Control Plan at 2.

57. The Quality Assurance/Quality Control Plan provided that the laboratory manager was responsible for, among other things, “insur[ing] the validity of all methods used in the laboratory.”

58. The Quality Assurance/Quality Control Plan provided that “[p]roficiency reviews are conducted by the Lab Manager annually using known samples.” Quality Assurance/Quality Control Plan at 3.

59. The Quality Assurance/Quality Control plan provided that the senior analyst “[m]aintains and troubleshoots all laboratory instrumentation.” Quality Assurance/Quality Control Plan at 2.

60. The Quality Assurance/Quality Control plan provided that “[t]he lab manager and senior analyst are responsible for the preventive maintenance of the instruments. All equipment

is inspected daily for general cleanliness and repair. Needed cleaning or repairs are made when noted regardless of other work” Quality Assurance/Quality Control Plan at 5.

61. The Quality Assurance/Quality Control plan provided that the balance checks had to be calibrated once per week, and that the calibration had to be verified by class “S” weights. Quality Assurance/Quality Control Plan at 6.

62. The Quality Assurance/Quality Control Plan provided that “Duplicate and spikes are analyzed as determined by the written [Standard Operating Procedures] and are selected during the Sample Log-in procedure.” Quality Assurance/Quality Control Plan at 7.

63. The Permit required Rineco to “at all times properly operate all facilities and systems of treatment, storage and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this Permit.” Permit Condition I.E.6. “Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures.” *Id.*

64. The Permit also required Rineco to “maintain proper functional instruments, use approved sampling and analytical methods, verify the validity of sampling and analytical procedures, and perform correct calculations.” Permit Condition II.C.

65. Rineco did not always comply with the requirements described in paragraphs 52 through 64 above.

B. Violations of Standard Operating Procedures

66. As alleged above, the Permit required Heartland and Rineco to use the procedures outlined in the Waste Analysis Plan and the Quality Assurance/Quality Control Plan, and the

Standard Operating Procedures contained therein to conduct analysis of hazardous waste fuels arriving at the facility.

67. On numerous occasions and in many respects, Rineco did not follow the procedures outlined in the Waste Analysis Plan, the Quality Assurance/Quality Control Plan and/or the Standard Operating Procedures contained therein.

C. Potentially Unreliable Data

68. For reasons including, but not limited to, the violations alleged above, Rineco's laboratory produced potentially unreliable data about the amount of hazardous constituents in the hazardous waste-derived fuel burned at the Cement Plant.

69. As the owner of the facility, Heartland was jointly responsible with Rineco for ensuring that the data produced by Rineco was reliable.

70. Heartland used the potentially unreliable data produced by Rineco to determine how much of the hazardous waste-derived fuel it could burn each hour without exceeding the limits set in its Certification of Compliance.

71. Because the data it used was potentially unreliable, Heartland could not ensure that the hazardous waste-derived fuel fired into its boilers or industrial furnaces was within the limits set in its Certification of Compliance.

II. Failure to Keep Containers of Hazardous Waste Closed

72. 40 C.F.R. § 264 provides that a "container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste." 40 C.F.R. § 264.173(a). Permit Section III.B.1. of the 1994 Kansas permit requires that container storage areas be maintained in accordance with 40 C.F.R. § 264, subpart I.

73. At the May 1998 Inspection at least three containers were not closed: the “dragon gut” container, which had a torn tarp; the “grain buggy,” which also had a torn tarp; and a satellite container, on which the locking ring was not fastened.

III. Inadequate Secondary Containment

74. 40 C.F.R. Part 264, Subpart J applies to permitted facilities owning or operating hazardous waste storage tanks. Section IV.B.1. of the Permit requires that hazardous waste tanks be maintained in accordance with 40 C.F.R. Part 264, Subpart J.

75. Under those regulations, the lining of secondary containment around a waste tank must be free of “cracks or gaps.” 40 C.F.R. § 264.193(e)(1)(iii).

76. At the time of the May 1998 Inspection, the lining of the secondary containment around a waste tank had holes in it.

IV. Failure to Mark Equipment

77. 40 C.F.R. § 265.1050(c) requires that all equipment subject to 40 C.F.R. Chapter I, Subpart BB be “marked in such a manner that it can be distinguished readily from other pieces of equipment.”

78. At the time of the May 1998 Inspection, tags or other identifying marks were missing from equipment subject to Subpart BB at the tank farm and rail car unloading area.

79. At the time of the June 1998 inspection, there were no tags or other identifying marks on the kiln lances, which are subject to Subpart BB.

FIRST CLAIM FOR RELIEF (AGAINST RINECO AND HEARTLAND): FAILURE TO ENSURE THAT THE PROCEDURES IN THE WASTE ANALYSIS PLAN AND QUALITY ASSURANCE/QUALITY CONTROL PLAN WERE FOLLOWED

80. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

81. Each instance in which Rineco failed to comply with the Waste Analysis Plan and Quality Assurance/Quality Control Plan was a separate violation of the Permit.

82. Each instance in which Rineco failed to comply with the Waste Analysis Plan and Quality Assurance/Quality Control Plan was therefore a separate violation of RCRA Section 3005(a), 42 U.S.C. § 6925(a), and Kan. Stat. Ann. § 65-3441(a)(3).

83. Heartland, as the owner of the Hazardous Waste Management Facility, and Rineco, as the operator of the Hazardous Waste Management Facility, are each subject to a civil penalty of not more than \$27,500 per day for each violation of RCRA occurring after January 30, 1997. 42 U.S.C. § 6928(g), Pub. L. 104-134; 61 Fed. Reg. 69,360 (Dec. 31, 1996).

SECOND CLAIM FOR RELIEF (AGAINST HEARTLAND):
VIOLATION OF 40 C.F.R. §§ 264.13(a)(1) & 266.102(b)(2)

84. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

85. Each day on which Heartland burned hazardous wastes without obtaining a detailed chemical and physical analysis of a representative sample of the wastes that contained all the information which must be known to treat, store, or dispose of the waste in accordance with Parts 264 and 268 of 40 C.F.R. was a separate violation of 40 C.F.R. § 264.13(a)(1).

86. Each day on which Heartland burned hazardous wastes without obtaining information necessary to ensure that the hazardous waste, other fuels, and industrial furnace feedstocks fired into the boiler or industrial furnace were within the limits specified in its certification of compliance was a separate violation of 40 C.F.R. § 266.102(b)(2).

87. Heartland is subject to a civil penalty of not more than \$27,500 per day for each violation of RCRA occurring after January 30, 1997. 42 U.S.C. § 6928(g), Pub. L. 104-134; 61 Fed. Reg. 69,360 (Dec. 31, 1996).

**THIRD CLAIM FOR RELIEF (AGAINST RINECO AND HEARTLAND):
FAILURE TO KEEP CONTAINERS OF HAZARDOUS WASTE CLOSED**

88. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

89. Each day that a container holding hazardous waste was not kept closed was a separate violation of Permit section III.B.1, RCRA Section 3005(a), 42 U.S.C. § 6925(a), Kan. Stat. Ann. § 65-3441(a)(3) and K.A.R. 28-31-4(j).

90. Heartland and Rineco are each subject to a civil penalty of not more than \$27,500 per day for each violation of RCRA occurring after January 30, 1997. 42 U.S.C. § 6928(g), Pub. L. 104-134; 61 Fed. Reg. 69,360 (Dec. 31, 1996).

**FOURTH CLAIM FOR RELIEF (AGAINST RINECO AND HEARTLAND):
INADEQUATE SECONDARY CONTAINMENT**

91. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

92. Each day on which secondary containment at the facility did not comply with 40 C.F.R. § 264.193(e)(1)(iii) was a separate violation of permit section IV.B.1, RCRA Section 3005(a), 42 U.S.C. § 6925(a), and Kan. Stat. Ann. § 65-3441(a)(3).

93. Heartland and Rineco are each subject to a civil penalty of not more than \$27,500 per day for each violation of RCRA occurring after January 30, 1997. 42 U.S.C. § 6928(g), Pub. L. 104-134; 61 Fed. Reg. 69,360 (Dec. 31, 1996).

**FIFTH CLAIM FOR RELIEF (AGAINST RINECO AND HEARTLAND):
FAILURE TO MARK EQUIPMENT**

94. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

95. Each day that a piece of equipment at the Cement Plant that was subject 40 C.F.R. Chapter I, Subpart BB was not tagged in accordance with 40 C.F.R. § 265.1050(c) was a separate violation of RCRA.

96. Heartland and Rineco are each subject to a civil penalty of not more than \$27,500 per day for each violation of RCRA occurring after January 30, 1997. 42 U.S.C. § 6928(g), Pub. L. 104-134; 61 Fed. Reg. 69,360 (Dec. 31, 1996).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court provide the following relief:

1. A declaration that Heartland and Rineco operated in violation of RCRA, Kansas law, federal regulations, and their permit.
2. A judgment assessing civil penalties against defendant of up to \$27,500 per day for each violation of RCRA;
3. A judgment awarding the United States the costs of this action; and
4. Such further relief as this Court may deem appropriate.

Respectfully submitted,

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